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9 Attorney for Defendant Nicole Lopez

10 United States District Court

11 District of Nevada

12 United States of America,

13 Plaintiff,

14 v.

15 Nicole Lopez,

16 Defendant.

Case No. 2:18-cr-00340-APG-VCF-2

Motion for Judicial Recommendation
Pursuant to 18 U.S.C. §§ 3621(b)(4) and
3624

17 Memorandum of Points and Authorities

18 The Defendant, Nicole Lopez, by and through her attorney, Richard A. Wright, Esquire,
19 Wright Marsh & Levy, hereby moves this Court for a Judicial Recommendation for the type of
20 penal or correctional facility defendant is to serve her BOP custodial sentence. Counsel, at the
21 time of Ms. Lopez's sentencing in 2019, only requested that Ms. Lopez serve her sentence at
22 FCI Dublin and participate in the RDAP program. ECF 61. This Court made those
23 recommendations in the judgment of conviction entered on November 4, 2019. *Id.* However,
24 counsel did not make the following request for recommendation that Ms. Lopez be able to serve
25 her sentence at a residential reentry center or on home confinement if she is eligible under the
26 Bureau of Prisons' (BOP) authority. At the time, no such recommendation was thought to be
needed.

I. Procedural History¹

On October 30, 2018, the government filed an indictment against Ms. Lopez. ECF 13. The undersigned was appointed as CJA counsel on November 6, 2018 at Ms. Lopez's initial appearance where she was detained. ECF 25. At that time, the Court found Ms. Lopez to be indigent. *Id.* On April 17, 2019, Ms. Lopez pled guilty, by way of plea agreement, to one count conspiracy to distribute a controlled substance, methamphetamine, in violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(B)(viii), and 846; and one count felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). ECF 43, 44. On October 31, 2019, this Court sentenced Ms. Lopez to 72 months in custody. ECF 60. Judgment of Conviction was entered on November 4, 2019. ECF 61. Ms. Lopez is currently located at FCI Phoenix with a projected release date of November 20, 2023.

II. This Court has the Authority to Enter a Judicial Recommendation Post-Judgment of Conviction

18 U.S.C. § 3621 promulgates how the Bureau of Prisons (BOP) shall designate the place of a prisoner's imprisonment. At the time of sentencing, a defendant is allowed to make a request for the place in which she wishes to serve her sentence acknowledging that the Court may only make the recommendation in the judgment of conviction and the ultimate designating authority resides with the BOP. *See* 18 U.S.C. § 3621(b)(4)(B) (stating that BOP can consider a Court's "recommend[ation] [for] a type of penal or correctional facility as appropriate"). Community Corrections facilities also include residential reentry centers and placement in home confinement under the supervision and authority of the BOP. *See* 18 U.S.C. 3624(c) (discussing prerelease custody and authority of the BOP to allow prisoner's a reasonable

¹ Simultaneously with this filing, the undersigned filed a motion for reappointment of CJA counsel.

1 opportunity to begin and prepare for reentry into the community). 18 U.S.C. § 3624(c) states
 2 in pertinent part:

3 **(c) PRERELEASE CUSTODY.—**

4 **(1) IN GENERAL.—**

5 The Director of the Bureau of Prisons shall, to the extent
 6 practicable, ensure that a prisoner serving a term of
 7 imprisonment spends a portion of the final months of that
 8 term (not to exceed 12 months), under conditions that will
 9 afford that prisoner a reasonable opportunity to adjust to
 10 and prepare for the reentry of that prisoner into the
 11 community. Such conditions may include a community
 12 correctional facility.

13 **(2) HOME CONFINEMENT AUTHORITY.—**

14 The authority under this subsection may be used to place
 15 a prisoner in home confinement for the shorter of 10
 16 percent of the term of imprisonment of that prisoner or 6
 17 months. The Bureau of Prisons shall, to the extent
 18 practicable, place prisoners with lower risk levels and
 19 lower needs on home confinement for the maximum
 20 amount of time permitted under this paragraph

21 Thus, as an inmate nears the end of her custodial sentence, the BOP may elect to place
 22 her in another community correctional facility such as a residential reentry center or on home
 23 confinement still under the authority of the BOP to allow for reintegration. Such a decision
 24 rests solely with the BOP and its analysis as to whether a particular inmate would qualify and
 25 benefit from such placement. BOP has the ultimate decision-making authority. However,
 26 Courts in the District of Nevada have Ordered the recommendation Ms. Lopez is requesting.
See United States v. Parlin, 2:14-cr-00299-JCM-CWH, ECF 229, Oct. 17, 2019. Such
 recommendations are reviewed and considered by BOP.

It is under this authority, Ms. Lopez makes the instant request that this Court recommend
 that BOP consider her for placement at the residential reentry center and for home confinement

1 as soon as she is eligible. BOP still has the ultimate decision-making authority but BOP is
2 required to consider the Court's judicial recommendation under 18 U.S.C. § 3621(b)(4).

3 At the time of sentencing, while counsel did make a request for recommendation for
4 FCI Dublin and to participate in RDAP, counsel did not request this Court recommend the BOP
5 consider Ms. Lopez for placement at a residential reentry center and home confinement as soon
6 as she is eligible. At the time, no such recommendation was thought to be needed. However,
7 Ms. Lopez now informs the Court, through counsel, that such a recommendation would aid
8 BOP in appropriately placing her at a residential reentry center or home confinement for the
9 maximum allowable time if there was a judicial recommendation.

10 **III. An Update from Ms. Lopez to the Court**

11 According to the PSR in this case, Ms. Lopez has been in continuous federal custody
12 since on or about October 19, 2018. Ms. Lopez was sentenced in October 31, 2019. With a
13 72-month sentence imposed, her current projected release date is November 20, 2023. At the
14 time of sentencing, Ms. Lopez submitted a substantial sentencing memorandum and also
15 included a psychological report for the Court's consideration. As part of that report, Dr. Collins
16 opined that Ms. Lopez had suffered from complex trauma. ECF 58. Dr. Collins found that for
17 Ms. Lopez, she experienced extensive symptoms of PTSD over the years, including nightmares,
18 dissociative reactions, physiological reactions, persistent negative beliefs and expectations,
19 persistent negative emotional states, irritable behavior, angry outbursts, hypervigilance,
20 exaggerated startled response, and sleep disturbance. *Id.* Dr. Collins recommended that Ms.
21 Lopez participate in inpatient mental health treatment to address her PTSD and substance use
22 disorder. *Id.* Dr. Collins further recommended that additional services would be needed for
23 successful reintegration into the community after a custodial sentence. ECF 59, filed under seal
24 at p. 16.

25 Ms. Lopez has taken Dr. Collins' recommendations to heart and focused her time
26 exclusively on rehabilitation while incarcerated. Shortly after her sentencing in October 2019,

1 she was designated to a BOP facility. However, in March 2020, the COVID-19 pandemic
2 manifested, causing a halt to many of the BOP programs. By August 2020, Ms. Lopez was
3 able to begin the UNICOR CSR Apprentice Program and complete the following courses during
4 the remainder of 2020: Ace Civil Rights Movement, Ace Peak Brain Performance, AT Risk
5 Program, Ace Channeling Stress 1 and 2 course, Ace Think and be healthy course, Ace Jazz
6 Justice P1 course, and the Ace Benefits of Being course.

7 In 2021, she pushed herself to complete 7 additional courses including courses on
8 decision making, finance, music, and justice. She also boasts certificates of completion for
9 Trauma in Life an 8-hour workshop; Change Plan consisting of 15 hours of psychoeducation;
10 Foundation, consisting of 15 hours of Psychoeducation; Assert Yourself, consisting of 8 hours
11 of psychoeducation; Start Now, consisting of 32 hours of psychoeducation; and Understanding
12 Feelings of Shame and Guilt, consisting of 7 hours of psychoeducation. *See Exhibit A.* She
13 continues to receive mental health care through the BOP medical facility and has not had any
14 incident reports in the last six months.

15 Ms. Lopez has been incarcerated for approximately 4 years. She wishes this Court to
16 know that should the Court make the judicial recommendation and BOP allow for her to
17 participate in her full residential reentry facility and home confinement time, she will use this
18 lengthier period to continue her rehabilitation, progressively transition from a BOP lifestyle to
19 life in society, maintain her sobriety, and use this time under BOP's guidance to continue
20 obtaining coping skills to appropriately adjust to life post-incarceration.

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IV. Conclusion

Ms. Lopez requests this Court grant her Motion for Judicial Recommendation Pursuant to 18 U.S.C. §§ 3621(b)(4) and 3624 and enter an Order recommending the BOP consider her for placement at the residential reentry center and home confinement as soon as she is eligible. This Court has the authority to make this recommendation under 18 U.S.C. §§ 3621 and 3624. Ms. Lopez recognizes that this is only a recommendation and that BOP will make the final decision.

DATED April 21, 2022.

Wright Marsh & Levy

By: /s/ Richard A. Wright

Richard A. Wright
Attorney for Nicole Lopez

DATED this 16th Day of May, 2022.

IT IS SO ORDERED: 

United States District Judge Gordan

CERTIFICATE OF ELECTRONIC SERVICE

The undersigned hereby certifies that she is an employee of Wright Marsh & Levy and is a person of such age and discretion as to be competent to serve papers. That on April 21, 2022, she served an electronic copy of the above and foregoing **Motion for Judicial Recommendation Pursuant to 18 U.S.C. §§ 3621(b)(4) and 3624** by electronic service (ECF) to the person named below:

Christopher Chiou
Acting United States Attorney District of Nevada
Kevin Schiff
Assistant United States Attorney
kevin.schiff@usdoj.gov
501 Las Vegas Blvd. South, Suite 1100
Las Vegas, Nevada 89101

/s/ Debbie Caroselli
Employee Wright Marsh & Levy

EXHIBIT A

EXHIBIT A

FCI Phoenix
Psychology Department

Certificate of Completion

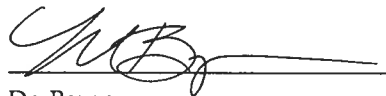
presented to

Nicole Lopez

for successful completion of the 8-hour workshop

Trauma in Life

October 20, 2021



Dr. Bazan
Resolve Program Coordinator
FPC Phoenix



Certificate of Completion

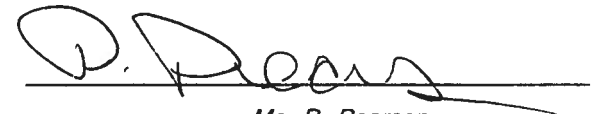
Presented to

For successfully completing

Nicole Lopez

Change Plan Consisting of Fifteen Hours of Psychoeducation.

This certificate is hereby issued this 29th day of October, 2021

A handwritten signature in black ink, appearing to read 'P. Pearson', is written over a horizontal line.

Ms. P. Pearson

Special Populations Coordinator

Certificate of Completion

Presented to

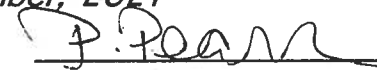
Nicole Lopez

For successfully completing

Foundation

Consisting of Fifteen Hours of Psychoeducation.

This certificate is hereby issued this 29th day of September, 2021

A handwritten signature in black ink, appearing to read 'P. Pearson', written over a horizontal line.

Ms. P. Pearson

Special Populations Coordinator

Certificate of Completion

Presented to

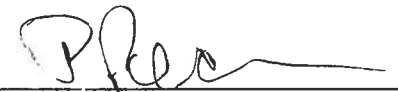
Nicole Lopez

For successfully completing

Assert Yourself

Consisting of 8 Hours of Psychoeducation

This certificate is hereby issued this 29th day of September, 2021



Ms. P. Pearson

Special Populations Coordinator

Certificate of Completion

*Presented to
For successfully completing*

Nicole Lopez

Start Now

*Consisting of Thirty-two Hours of Psychoeducation.
This certificate is hereby issued this 30th day of September, 2021*



Ms. P. Pearson

Special Populations Coordinator

Certificate of Completion

Presented to

For successfully completing

Nicole Lopez

Understanding Feelings: Shame & Guilt

Consisting of Seven Hours of Psychoeducation

This certificate is hereby issued this 23rd day of September, 2021

A handwritten signature in black ink, appearing to read 'P. Pearson', written over a horizontal line.

Ms. P. Pearson

Special Populations Coordinator